

# SPECIAL *investigation*

*Goldwater Institute*

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## Undisciplined Bureaucracy: Civil Service Job Protections Make Disciplining a Problem Government Employee Complicated, Costly and Time Consuming

by Mark Flatten, Investigative Journalist, Goldwater Institute

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As Dale Hausner was cruising the Valley's streets gunning down innocent victims, he was also getting mediocre performance reviews as a City of Phoenix employee at Sky Harbor International Airport.

Hausner was fired from his job as a custodian at the airport on August 4, 2006, the day after he was arrested as the prime suspect in the Serial Shooter murder spree in which he and a cohort killed at least six people and wounded 19 others during a 14-month reign of terror.

He appealed his dismissal, invoking his rights under a litany of personnel rules and procedures that protect city workers from being disciplined too harshly or too quickly. Though Hausner was not drawing a paycheck as he sat in jail awaiting trial, his appeal to the city's Civil Service Board remained active for the next three years. It finally ended when the appeal was withdrawn in April 2009, a month after he was convicted of first-degree murder and sentenced to death.

While Hausner's case is extreme, it illustrates the at-times absurd barriers to firing a government worker in Arizona, regardless of how compelling the evidence or clear the cause.

A government job carries with it a constitutionally protected property right in most cases. That means a list of legal due process procedures must be followed before that right can be taken away. Unlike the private sector, where most workers can be dismissed for almost any reason, government workers in Arizona typically can only be disciplined for cause. They are protected by state laws, personnel rules, appeals procedures, court precedents, and sometimes union contracts that lay out a series of complicated, costly and time-consuming procedures that must be followed before a government worker can be terminated, suspended, or demoted.

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I N S T I T U T E



Dale Hausner

Firing a government worker can take years, according to a Goldwater Institute review of more than 600 personnel cases involving state agencies, the City of Phoenix, and the Tucson Unified School District. Among the major findings:

- Firing an employee can be a long and cumbersome process for an agency, even when there is little dispute as to the underlying facts of the case. As a disciplinary action proceeds through the appeals process, the employee's conduct often becomes less relevant than procedural issues. The Arizona Department of Environmental Quality tried for six years to terminate one supervisor who had a romantic relationship with a subordinate, then lied about it to agency administrators. The Arizona Court of Appeals has twice ordered the employee reinstated with full back pay and benefits, most recently in August 2010, after finding the agency cited the wrong section of the personnel code when it dismissed him in 2004.
- Blatant misconduct alone is typically not enough to ensure a government worker gets fired or stays fired. Due process requirements built into Arizona statutes and local governments' personnel rules mean there is an extensive review process within an agency before the decision is made to terminate an employee. Once an employee is dismissed, a move that typically requires an agency director's approval, the termination can be appealed to an independent review panel, which holds formal hearings that can last for days. Appeals boards have the power to substitute their own judgment for the agency director's, meaning any decision regarding discipline can be overturned even when there is little dispute that the alleged misconduct occurred and the penalty imposed is consistent with agency guidelines. In one case, the Arizona State Personnel Board ordered a Department of Corrections worker reinstated even after she pleaded guilty to a felony domestic violence charge for firing a gun at her husband, automatic grounds for termination under agency rules. The corrections department appealed to superior court, which ordered the personnel board to reconsider its findings. The worker was finally dismissed for good after the personnel board followed the court's orders and upheld the dismissal in November 2009, more than two years after the shooting incident occurred.
- "Progressive discipline" is the mantra for government agencies when it comes to dealing with problem workers. That means by the time an agency fires someone, the person has had multiple chances to improve inadequate performance and has failed in every instance. The typical chain of progression in the City of Phoenix is a written reprimand, a one-day suspension, a three-day suspension, a five-day suspension, and finally consideration of dismissal. Even at that, the city often offers employees more chances or a "last chance agreement," particularly for

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drug or alcohol violations, which gives the worker one final opportunity to correct behavioral problems before any move is made to terminate employment. In one case the Institute reviewed, a Phoenix water quality inspector was finally terminated in May 2009 for incompetence, insubordination, damaging city property, and falsifying city records. The worker signed a last-chance agreement a year earlier for reporting to work under the influence of alcohol, amphetamines, and marijuana, according to city records. In the four years prior to his termination, the man had been counseled, reprimanded, or suspended for 16 separate violations that included drug use, falsifying documents, sleeping on the job, inappropriate conduct, and poor attendance.

- It is rare that a government worker is terminated for poor performance alone. Almost every dismissal was triggered by a specific incident that came after a long history of performance problems. Of the 416 disciplinary cases from the City of Phoenix reviewed by the Goldwater Institute, 33 resulted in dismissal. Of those, only two were for poor performance alone, according to city records. The record among state agencies is better. Of the 69 terminations of state workers the Institute reviewed, eight were primarily for chronic poor performance, fewer than were dismissed for having pornographic or inappropriate e-mails on their work computers. Four of those terminated for poor performance were Child Protective Services workers who had failed to perform required duties on multiple cases.
- “Zero tolerance” policies against things like drug use, workplace violence, and sexual or racial harassment do not mean people who break those rules will lose their jobs. They are far more likely to face suspension or demotion. Two Phoenix police officers were dismissed for testing positive for steroid levels beyond what is allowed by the department under its “zero tolerance” policy for illegal drug use. The city’s Civil Service Board recently reinstated both after long suspensions without pay. One of the officers had a steroid level 90 times higher than what is permissible under agency standards. While some workers were fired for threats or violence, the incident that resulted in dismissal usually was the culmination of a long history of aggressive behavior.
- Many government agencies delay making a decision on discipline by putting an employee accused of misconduct on paid administrative leave. That means the worker stays at home and draws full pay and benefits while the agency investigates allegations that could result in some punitive action. State agencies racked up more than 88,000 hours of paid administrative leave in the two-year period through April 2010, according to records from the Arizona Department of Administration,

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which handles personnel issues for most state agencies outside the legislative and judicial branches. That's the equivalent of state workers spending more than 42 years on paid leave. The Arizona Department of Public Safety, which has its own personnel system, added more than 70 months of paid administrative leave during the same timeframe, the equivalent of about 12,000 hours. In that time, the state Department of Economic Security put workers on more than 38,000 hours of paid leave, virtually all of it because of pending disciplinary investigations. The Department of Corrections logged 26,600 hours of paid leave. One corrections department worker was on paid leave for 2,390 hours – the equivalent of more than a year – after he was arrested on drug charges. The cost to Arizona taxpayers for paid administrative leave during that two-year period was more than \$1.6 million, not including benefits or other employer-related expenses. The City of Phoenix does not track paid administrative leave for any agency except the police department. Phoenix police logged 25,472 hours of paid leave during the 30-month period through June 30, 2010. Almost all of it was because of disciplinary investigations, police officials acknowledge. The Tucson Unified School District does not track administrative leave imposed during disciplinary investigations.

- As difficult as it can be to dismiss a bad government worker at the state and city, the process is even more convoluted at the school district level, where disciplinary procedures are often dictated by agreements with labor unions. The Tucson district did not fire anyone during the 15 months studied by the Goldwater Institute, according to district records. More than half of the cases in Tucson resulted in written reprimands, even for teachers who showed a pattern of problem behavior. As a result, kids are often stuck in classrooms with teachers who are bullying, rude, or ineffective.



“The system that is in place right now is dysfunctional in terms of protecting the taxpayers.”

– *Phoenix City Councilman*  
*Sal DiCiccio*

“The system that is in place right now is dysfunctional in terms of protecting the taxpayers,” said Phoenix City Councilman Sal DiCiccio, who has pressed for greater accountability in city personnel issues. “It’s completely functional in protecting the employees. It works perfectly for them and there is no incentive to change. There is absolutely no incentive whatsoever built into what the City of Phoenix does to move out bad employees. None.”

## Cases Reviewed

In order to review government personnel practices in Arizona, the Goldwater Institute examined disciplinary files for the major state agencies, the City of Phoenix and Arizona’s second-largest school district, Tucson Unified. Because of

the volume of records and the difficulty in obtaining documents from so many agencies, the time periods and types of records vary.

For state agencies, the Goldwater Institute reviewed all cases that were appealed to the Arizona State Personnel Board from January 2008 through June 2010, as well as records dealing with administrative leave. State employees who are terminated, demoted, or suspended for more than 40 hours can appeal to the personnel board. People employed by the legislature, the courts, the Department of Public Safety, and a few smaller agencies have their own separate personnel systems, which for the most part were not reviewed.

All suspensions, demotions, and dismissals in the City of Phoenix from January 2009 through April 2010 were examined. The Institute also reviewed all cases that went to the city's Civil Service Board from January 2008 through June 2010. Employees who had not completed their post-hiring probationary period were not included.

All disciplinary records for the Tucson Unified School District from January 2009 through April 2010 were examined.

In all, the Goldwater Institute reviewed disciplinary records in 615 cases, including 416 from Phoenix, 115 from state agencies, and 84 from the Tucson school district. In many instances, a single individual had multiple disciplinary cases. The numbers for the state and city include workers put on long periods of administrative leave pending disciplinary investigations.

More than 10,000 pages of documents were reviewed and more than three dozen public records requests were filed. The Institute also conducted more than 30 interviews with elected officials, agency administrators, appeals board members, union representatives, and disciplined employees for this story.

In all but a few instances, the Goldwater Institute is not publishing the names of the disciplined employees in an effort to balance a review of public policy issues with the privacy of rank-and-file government workers who have nothing to do with making those policies.

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## **Due Process**

Government personnel practices are particularly relevant in troubled economic times, when agencies are trying to balance budgets with layoffs, furloughs, and other cost-cutting measures. Seniority and job performance are given equal weight in determining the order in which most government employees face layoffs. That means an agency might have to keep a chronically bad worker on the payroll while laying off a better performing employee who has fewer years of service.



Most government workers are considered “covered,” meaning they are protected by civil service rules that dictate specific reasons and procedures for disciplinary actions. The other category is “uncovered” or “exempt.” Those employees, typically the top officials within an agency, are “at-will” employees who can be dismissed at any time for virtually any reason. The U.S. Supreme Court has upheld this distinction, reasoning upper-echelon administrators are more likely to influence policy decisions and can appropriately carry out the political objectives of elected leaders.

There is no inherent right to a government job. States and local governments can opt not to afford any civil service protection for their workers. However, once a government bestows that protection through laws or policies, it creates a constitutionally protected property right that can only be taken away through a formalized due process procedure, the U.S. Supreme Court has ruled in a series of cases. The court has recognized governments have broad powers to define the terms of employment and the due process mechanism for employees.

On paper, the basic personnel protections for government workers in Arizona sound like good management. Before an employee can be terminated, demoted, or suspended for a significant period of time, the worker needs to be notified of the specific charges, be informed of the evidence of misconduct, and have an opportunity to respond.

In the real world, the formal requirements can become barriers to keeping good employees and getting rid of bad ones, according to agency administrators who expressed frustration with the system. First, any misconduct needs to be meticulously documented. Acts of misconduct must be matched up to specific violations of the personnel rules. Past disciplinary actions and performance reviews are big factors if a punishment ultimately reaches an outside review board, case histories show.

After an agency head imposes discipline, the case can be taken to an appeals board for an independent consideration of the circumstances. After that, either side can take the case to court.

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Both the Arizona State Personnel Board and the Phoenix Civil Service Board, where disciplinary cases are appealed, have the power to substitute their own judgment for that of the agency directors. That means even if an agency proves its case, the review boards have the option to overturn or modify disciplinary actions simply because they disagree with the punishment.

Of the cases the Goldwater Institute reviewed involving state workers, more than one in four resulted in the personnel board overturning the agency or reducing the punishment.

The Phoenix Civil Service Board overturned or modified the city’s disciplinary action in a third of the cases in which it rendered a decision.

The Tucson school district did not fire anyone during the time period reviewed by the Goldwater Institute, according to records supplied by the district. The district did enter into 12 separation agreements in which employees retired or quit rather than face disciplinary action.

“It does make our job more difficult,” Henry Darwin, deputy director of the Arizona Department of Environmental Quality (DEQ), said of the obstacles faced by agency administrators when it comes to disciplining a problem employee. “We have to make sure that whatever personnel actions we are taking are not only in the best interests of the State of Arizona, but also fit within the requirements of the personnel rules, which aren’t always easy to predict. You have on top of that the process of the hearing officer and the personnel board, all of whom bring their own perspectives to the situation. These are rarely cut-and-dry situations.”

DEQ officials learned the hard way how difficult it can be to fire an employee. The agency tried for more than six years to dismiss Kenyon Carlson, a supervisor in the quality assurance section. In August 2010, the Arizona Court of Appeals ordered him reinstated for the second time. Back pay and benefits alone have cost the state more than \$320,000, not counting staff time and legal fees.

### **Right Result, Wrong Reason**

Beginning in 2001, Carlson engaged in a romantic relationship with a woman he hired as a subordinate. During their nearly two-year involvement, Carlson gave the woman high marks on performance reviews and, by his own admission, hounded his bosses to get her choice assignments and promotions within the agency, according to court records and reports from the state appeals board.

At one point, agency higher-ups questioned Carlson about rumors of a romantic relationship with a subordinate. Carlson and the woman both denied the rumors when confronted, state records show.

The relationship ended in 2002. Even after the breakup, Carlson loaned the woman more than \$25,000. When he had trouble collecting, he left her an e-mail stating, “I see no reason to continue working for your promotion.” A month later, the woman made a sexual harassment complaint against Carlson. He was terminated for violating the agency’s sexual harassment policy in April 2004, and appealed to the State Personnel Board.

Carlson ultimately admitted to the relationship, lying to his bosses, and loaning money to the woman. The personnel board’s hearing officer, David Gering, found there was ample cause to dismiss Carlson, but that he did not sexually harass the woman since their relationship was consensual. Rather than side with Carlson, Gering recommended the board uphold Carlson’s dismissal based on what the courts would later call a doctrine of “right result, wrong reason.”



Henry Darwin,  
ADEQ Deputy Director

“Appellant (Carlson) has been dishonest to his superiors, has given a subordinate preferential long-term treatment based on a romantic relationship, and has created a conflict of interest by loaning a large amount of money to a subordinate,” Gering said in his recommendation. “Leaving aside the issue of dishonesty, Appellant has displayed ghastly judgment over an extended period of time. When the issue of honesty is factored in, it is difficult to see how he can be entrusted to an employment position within the State of Arizona.”

Over the next three months, the case went twice to the state personnel board, which in December 2004 voted to uphold the firing.

Carlson appealed to Maricopa County Superior Court, arguing he had not received adequate notice of the charges against him since the wrong section of the personnel code had been cited in his original termination letter. The judge in that case upheld the dismissal but was later overturned when Carlson went to the state Court of Appeals. The appeals court agreed with Carlson’s contention that his due process rights were violated by the notion of “right result, wrong reason.” It ordered him reinstated with full back pay in a unanimous ruling. That cost the state more than \$150,000, according to DEQ officials, who add there is no way to calculate how much the state spent in staff time to fight the case at the appeals board and in court.

## Round Two

In July 2007, shortly after Carlson returned to duty, he was dismissed again. The new dismissal letter laid out essentially the same facts it used in its 2004 case, but this time agency officials cited the right sections of the personnel code dealing with dishonesty, neglect of duty, and conflicts of interest.

The personnel board upheld the dismissal and Carlson again turned to the courts, contending the agency was trying to punish him twice for the same conduct. Carlson won in superior court. DEQ appealed and lost again in August. This time, the state had to pay about \$170,000 to Carlson for back pay and benefits.

Darwin, DEQ’s deputy director, said he still believes the agency had good reason to fire Carlson. As a result of the two appeals court cases, agency officials now know technical problems with paperwork can be as important in a disciplinary case as the underlying conduct itself, and that they will only get one shot at disciplining an employee for a particular act of misconduct, he said. Now whenever a covered employee is terminated, the dismissal letter will cite every possible violation of the personnel code to ensure the case does not get tossed based on the same technicality that led to the undoing of Carlson’s termination, Darwin said.

Because every charge will require more investigation and documentation, the cases will be even more expensive and time consuming, he said.



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Carlson's lawyer, Jeffrey Arbetman, disputes the notion that Carlson got his job back because of a legal technicality. It was the agency administrators who failed to do their jobs by documenting the case and determining the appropriate punishment, Arbetman said.

Carlson had a spotless record with 13 years at DEQ before he was dismissed in 2004, Arbetman said. He also has technical expertise in a highly specialized field.

But rather than dealing with his misbehavior with a suspension or demotion, agency officials pressed a sexual harassment case that turned out to be false, according to Arbetman.

"If anybody made bad judgments and should be terminated, how about these people that made bad judgments about this case?" Arbetman said. "Had they charged him properly and he was guilty of all that stuff, he shouldn't have been terminated because he was valuable to the agency. He did a very good job and he didn't hurt anybody."

Arbetman acknowledged that if DEQ had dismissed Carlson under the right sections of the personnel code, it would have been tougher to get his job back.

"They would have had grounds to terminate him and I would have had to go in and make the argument that he shouldn't have been terminated," Arbetman said. "I could not make the argument that he did nothing wrong."

Arbetman said he has no objection to Carlson's name being published. The precedent-setting court cases are public records. Beyond that, Arbetman wants the record corrected. Carlson's reputation was tarnished when DEQ accused him of sexual harassment, Arbetman said. That was disproven both at the State Personnel Board and in court.

Carlson's case is not the only one that has dragged on for years. A worker at the Arizona Department of Economic Security was forced to resign in 2004 amid charges she had a long history of rudeness to customers and insubordination to supervisors. The woman has already won one judgment from the court of appeals and her case is still tied up in Cochise County Superior Court. It has also gone to the State Personnel Board three times, most recently in November 2009 when the board was unable to reach a decision.

## Chances, Chances, And More Chances

While those cases illustrate how long a personnel case involving a government worker can drag on, a far more common issue is the unwillingness of agency administrators to deal with problem employees in the first place.

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In almost every case in which a government worker is fired, it is only after a long history of problems. The most common reason people get disciplined, particularly at the City of Phoenix, is not showing up for work. Among the city's disciplinary cases included in this review, more than one in five involves excessive absences or lateness. Among the city workers, attendance problems are the most common reason for terminations.

One groundskeeper at the city's Parks and Recreation Department was suspended for three days after racking up 52 incidents of unscheduled absences and tardiness. The city's standard is no more than six in a 12-month period. He also received a written reprimand and a one-day suspension in 2009 for the same reasons.

Other cases run the gamut of bad behavior. Common incidents that trigger discipline – but rarely dismissal – include sleeping on the job, using city property for personal errands, off-duty conduct such as driving while intoxicated, falsifying records or time sheets, and just goofing off.

Phoenix police issued a written reprimand to one officer who went to the movies during a shift and another who left his assigned area to visit a girlfriend for 90 minutes.

A manager at Sky Harbor International Airport got into trouble in February 2010 after it was discovered he checked out a city car almost every day, even though his job only required him to use it about once a week. His explanation was he wanted to the car available to take to lunch or drive around when he wasn't busy and wanted to get out of the office. His punishment was the equivalent of a three-day suspension in which he was neither docked pay nor required to take time off. City officials say that because the man is a salaried employee, his suspension could not be deducted from his pay, due to federal wage laws. Previously, the manager had received the equivalent of a one-day suspension for using a city vehicle to run personal errands.

Other conduct long tolerated by city officials is far more serious.

### **“Zero Tolerance”**

City policies say workplace violence, threats, drug use, and harassment based on race or sex will not be tolerated. Yet employees who engage in such conduct are repeatedly given second, third, and fourth chances before they face dismissal.

“Zero tolerance means that we don't tolerate that behavior,” said Janet Smith, Phoenix personnel director. “Zero tolerance does not necessarily mean we will move to termination. It's just a clear message that we send our employees that if

you demonstrate this kind of behavior in the workplace, it will not be tolerated; some consequence will occur.”

That consequence was long in coming for an equipment service worker at Sky Harbor Airport who was finally terminated in October 2009 after threatening to beat up his supervisor. The worker made the threats two days before he was scheduled to appear in front of the Civil Service Board to appeal a five-day suspension for language and conduct deemed threatening and abusive to co-workers.

By the time the man was dismissed, he had a long history of disciplinary problems that included insubordination, falsifying documents, and using threatening or abusive language against fellow employees, city records show. He had also been sent four times for training on civil treatment guidelines for city employees.

When confronted about his behavior, the man claimed he had been harassed by his supervisor since 2007, and that any comments he'd made were protected by the First Amendment and the United Nations Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. He also said the investigation violated his civil rights, raising the specter of a discrimination complaint.

The Civil Service Board upheld his firing.

Smith said supervisors try to use progressive discipline where appropriate, although if an employee's behavior is bad enough, the worker can be dismissed immediately. She acknowledged the airport worker's case was “excessive,” but added other factors such as a long tenure with the city may have mitigated his discipline.

“Our system is not perfect,” Smith said. “Our supervisors are not perfect. But I think our supervisors do a very good job of trying to hold people's feet to the fire. I guess I would argue that we at least tried to put him on notice. I don't think that's indicative of how we normally handle discipline cases in the city. We do give people chances.”

As for the city's effort to fire Dale Hausner for being one of Serial Shooters, Smith said the case remained on the Civil Service Board's agenda for so long because the union refused to allow it to be dismissed. Representatives from the American Federation of State, County and Municipal Employees, the main labor union that represents non-emergency workers in Phoenix, would not agree to an interview.

How the city deals with “zero tolerance” issues varies. The only pattern seems to be that violating such a policy rarely leads to dismissal without a history of prior incidents.

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Another firefighter was suspended for four days in December 2009 after he was found to be under the influence of illegal drugs, became involved in a standoff with police at his girlfriend’s home, and was found to have weapons in his locker, all violations of city policies that carry “zero tolerance” designations.

Cases involving sexual harassment or disparaging remarks based on an employee’s race or sexual preference resulted in a wide range of discipline.

A police sergeant was terminated earlier this year after subordinates complained about his use of language derogatory to Asians, Hispanics, blacks, and people with disabilities, according to city records. Before he was dismissed, the sergeant spent more than 1,500 hours on paid administrative leave while city officials investigated allegations of a hostile work environment reported by frontline officers. His conduct also resulted in a legal claim being filed against the city by an Asian police officer, which was settled for \$86,000.

The city’s top public information officer was not dealt with so harshly after some of his subordinates complained in August 2009 that he routinely made offensive remarks to female subordinates about sexual self-gratification, as well as inappropriate statements about Jews, Mormons, and homosexuals. He was demoted and suspended for 80 hours. An investigative report by the city’s equal opportunity office concluded prior supervisors had failed to document or deal with his inappropriate remarks in the past.

Other city employees faced discipline ranging from a one-day suspension to demotion for sexual harassment or making inappropriate racial remarks.

## **Management Problems**

When government workers are allowed to rack up long histories of poor performance or other problems, it typically is a sign that supervisors are not doing their jobs, said Arbetman, the labor lawyer who represented Carlson in his battle with the state Department of Environmental Quality. Arbetman’s specialty is labor law, particularly involving government employees. Though his clients in recent years have tended to be workers and labor organizations, he also is a former assistant state attorney general who defended the disciplinary actions imposed by agencies. Having seen the issue from both sides, Arbetman said firing a bad worker is not that difficult in Arizona. Agencies run into problems when management fails to properly document incidents, does not use annual performance reviews to identify poor performance, and does not correct problems early through training or counseling, he said.

It is easier for a bad supervisor to look the other way until an employee's behavior becomes unmanageable, he said. At that point, personnel managers are left trying to impose discipline with a scant record of prior problems and poor documentation of an unacceptable incident. When that happens, disciplinary actions are likely to get overturned on appeal, he said.

"That's a management problem and it does exist," Arbetman said. "It's terrible at the city. Those people just sit on their butts. Don't make waves, that's their style of management. And I think that's wrong too."

"It's human nature to take the path of least resistance and the good managers don't do that. What happens is they give the employee a choice: either you're a good employee or you're not a good employee and we're going to get rid of you. Those managers are very successful."

Kathy Peckardt, human resources director for the Arizona Department of Administration (DOA), agreed supervisors need to be held accountable for ensuring their staff is doing its job, and that poor performance should not be ignored. Most state agencies fall under the DOA personnel system, about 33,000 workers. Of those, 81 percent are covered by civil service protections.

Hiring and training a state worker is expensive, and it makes no sense to dismiss someone whose performance can be corrected through additional training or supervisory counseling, Peckardt said. That coupled with progressive discipline for problem workers is often enough to correct poor performance or bad behavior, she said. If the problem persists to the point that a worker needs to be fired, then it should be fully documented in the worker's personnel file and in past performance evaluations, she said.

If a problem employee's substandard performance and bad behavior is properly documented by supervisors, then the process of firing that person and having the case upheld at the personnel board and in court should not be difficult or time consuming, she said. Problems arise when a supervisor fails to hold subordinates accountable for past performance, and fails to document improper conduct. When that happens, it is difficult to fire a bad worker, according to Peckardt.

"It's part of your job as a supervisor," she said. "If the employee is not performing, it should be reflected in their performance evaluations. It won't be a surprise when you start going through the progressive discipline."

There were very few cases in the Goldwater Institute's review in which a supervisor was held accountable for poor management of employees. Usually those instances involved allowing workers to falsify time sheets or use government computers to download pornography or inappropriate content.

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## Death In A Cage

One notable case that included allegations that supervisors failed to do their jobs had tragic results. On May 19, 2009, prison inmate Marcia Powell threatened to commit suicide and was ordered to be moved from her cell to a higher security unit where she could be monitored more closely. However, because of an incident in that unit, Powell was placed in an outdoor enclosure. She was only supposed to be there temporarily, until it was safe to move her to the second unit.

Department of Corrections policy stated that an inmate could not be kept in an outdoor enclosure for more than two hours, an order that the deputy warden had told his staff to ignore when inmates refused to return to their cells. Powell was held in the enclosure for almost four hours.

Shortly after shift change, corrections officers noticed Powell was laying on the ground and unresponsive. Emergency workers tried to revive her, and she was rushed to the hospital, where she was taken off life support and died of dehydration and hyperthermia.

A subsequent investigation showed a second inmate had been held in the outdoor pen for 20 hours only four days earlier.

In the wake of Powell's death, 19 corrections department workers were disciplined, including a captain and a lieutenant. Four challenged their punishment to the State Personnel Board. Three had been terminated and the fourth, the captain, was demoted. The board reversed the captain's demotion, and ordered two of the dismissed employees reinstated. All three drew 160-hour suspensions from the personnel board. The board upheld the firing of the fourth worker, even though his actions were almost identical to those of another corrections officer who was reinstated. In fact, the two left together at the end of their shift, a an important point in that case since both of them were accused of failing to take action when they saw Powell had defecated on herself.



Charles Ryan,  
Director of the  
Arizona Department  
of Corrections

## “Frustrating” Rejection

Charles Ryan, the state's corrections director, said he cannot understand why the personnel board overturned the discipline he ordered.

“It's frustrating and it makes you scratch your head,” Ryan said. “What did we miss? Why did they overturn this? I believe the decisions that we made in terms of all of the employees involved were well thought out, carefully made decisions.

“We know historically that the personnel board has leanings toward employees and that they are very sensitive to employee rights. I think we are too. We don't make these decisions lightly. We take them seriously.”

Jim Thompson, chairman of the State Personnel Board, said he cannot discuss individual cases, including the appeals that resulted from Powell's death. He did say generally that he tries to look at the circumstances and individual conduct of each employee as well as who is most accountable, the employee or the supervisor.

Often the agency does not prove its case and the discipline is overturned, Thompson said.

But even at that, the fate of employees who take their cases to the personnel board typically hinges on the independent judgments made by each of the members based on their own leanings and the facts presented, he said.

Membership on the board is set by statute. Thompson, who is city manager of Casa Grande, holds the seat reserved for someone with government management experience. The other four members include a professional personnel manager, a state employee, a business manager, and a member of the general public.

In the past, the makeup of the board was skewed toward protecting employees, but that is changing with recent appointments, Thompson said.

"I am going to look at it as 'Is this in the best interests of the taxpayer?'" he said. "If it's not, I will act accordingly. You have to think about the employee as well as their livelihoods. They may have a family and they may have people that rely on them. But there are certain choices we make in life, and those choices sometimes have consequences."

Thompson voted with the majority to modify the discipline imposed in three of the four cases that resulted from Powell's death. He also voted with the majority to uphold the firing of the fourth corrections worker.

## Employee Appeals

The state and city personnel appeals boards operate much the same. A covered employee who has completed a post-hiring probationary period and believes a punishment is too severe can file an appeal, present that argument to a hearing officer, and ask the appeals panel to render its judgment. The employee and the agency can appeal the personnel board's decision to superior court.

Members of the state personnel board are appointed by the governor. The Phoenix Civil Service Board is appointed by the city council.

In the Tucson Unified School District, the superintendent makes the final decision, though terminations can be appealed to the school board.

State employees who are terminated, demoted or suspended for more than 40 hours can appeal to the personnel board.

*"I am going to look at it as 'Is this in the best interests of the taxpayer?'"*

*— Jim Thompson, chairman of the Arizona State Personnel Board*



*Phoenix City Hall*

City of Phoenix rules allow an employee suspended for a day or more to appeal. Contracts with labor unions in Phoenix essentially require the city to follow its personnel procedures and allow for unions to provide the employee with a representative in disciplinary actions, but the union contracts do not add protections or procedures.

State agencies do not have union contracts that affect disciplinary procedures. For teachers in the Tucson school district, most of the appeals process is laid out in the contract with the union.

The state and city appeals boards are independent of the agencies. Their role is to provide an impartial review of discipline to ensure the allegations made by the agency are proven, and that the punishment is not arbitrary, capricious, or contrary to law, according to the statutes and rules under which they operate.

The boards also have the power to overturn or modify an agency's punishment, and frequently do. That means even if charges against an employee are proven and the discipline falls within the permissible range, the boards can conclude the punishment is either unwarranted or too severe. Once the appeals board has weighed in, the decision is considered final and can only be challenged in court. State laws specifically say the courts may only review a case to determine if the punishment was illegal, unsupported by any evidence, arbitrary or capricious, or imposed in a way that significantly deprived the employee of due process rights. If not, the court is required to uphold the board's decision.

The Goldwater Institute limited its review of disciplinary cases involving state agencies to those appealed to the State Personnel Board. Of the 83 board cases reviewed, 69 were dismissals, 11 were demotions, and three were suspensions. The appeals board overturned or modified 19 of the dismissals.

The role of a personnel appeals board is to ensure that the charges against an employee are proven and that the punishment meted out by an agency is fair, said Stan Lubin, a Phoenix labor lawyer and former chairman of the State Personnel Board.

Lubin was not on the board when the cases related to Powell's death were heard. But he frequently voted to overturn agency punishment during his five-year tenure, typically because management did a poor job of making its case, Lubin said. That might mean the agency did not document poor performance or behavioral issues. It might be because management accepted the word of a supervisor over that of an employee without properly investigating, he said.

"If you fire the wrong person, where does that get the government?" Lubin said. "Now you've got the liar still working and the good person is out on the street. That doesn't make any sense."

## Higher Standards

The most common reasons state workers are fired include dishonesty, neglect of duty, having pornography or inappropriate e-mails on their computers, rudeness to the public, and threats or violence against fellow employees, according to a review of personnel board cases.

Sometimes a worker's misconduct is particularly embarrassing to an agency. One woman who worked at the Arizona Department of Revenue was dismissed for selling stolen cigarettes. The revenue department, which is responsible for collecting the state's steep taxes on cigarettes, has a task force to combat illegal cigarette sales. The personnel board upheld her dismissal.

Sometimes neglect of duty can create havoc, even in a small agency. A communications supervisor for the Arizona Game and Fish Department failed to properly process a call about a mountain lion on the loose in Douglas. As a result, the animal wandered the city's streets for 12 hours before a game warden was dispatched to kill it. The personnel board ordered her reinstated with an 80-hour suspension.

Some jobs carry higher expectations because of the dire consequences of inaction, particularly those in Child Protective Services (CPS), a division of the Department of Economic Security.

Of the cases reviewed by the Goldwater Institute, eight involved CPS workers, all of whom had been terminated. Two were reinstated by the personnel board.

Steve Meissner, communications director for DES, said the agency sets high standards for workers responsible for protecting children and vulnerable adults. Agency supervisors are expected to document poor performance or bad behavior, he said. When problems arise, they use progressive discipline where it is appropriate.

"We are dealing with children, but we're also dealing with progressive discipline," Meissner said when asked about the cases involving CPS workers with long histories of complaints or disciplinary problems. "The implication is that we didn't do anything until it reached the personnel board. I would argue that there were extensive steps and there were interventions."

Meissner did not directly respond to specific concerns raised in specific cases.

CPS cases that went to the personnel board typically involved a worker who routinely failed to investigate cases, meet with clients, parents, or caregivers, or appropriately document work.

*The most common reasons state workers are fired include dishonesty, neglect of duty, having pornography or inappropriate e-mails on their computers, rudeness to the public, and threats or violence against fellow employees.*



*Arizona State Capitol*

In July 2008, one CPS worker was put on a 90-day notice that she would be fired if her performance did not improve. By then, the agency had documented instances where she had failed to have face-to-face meetings with children, parents, and caregivers, as required by policy. She also had been accused of unprofessional conduct by a family on her caseload, and had verbally confronted a supervisor in front of a child in the agency's care. Most disturbing, she failed to respond to a report of sexual abuse of a child within 72 hours, as required by DES policy. The report was not investigated for almost four weeks, and then only after the worker was ordered to respond by a supervisor.

The worker was terminated about two months after being put on notice because she still was not doing her job, according to agency records. The board ended up ordering the woman reinstated because she was not given the full 90 days to improve.

Asked whether DES officials gave that woman too many chances to the detriment of children on her caseload, Meissner responded, "When we find those cases, we take corrective action. It would be my expectation that in that particular case, there was corrective action taken."

## **Unprofessional Conduct**

Another CPS worker was terminated when he refused to handle the placement of a child on his caseload into a drug treatment facility because his workday was almost over, according to personnel board records. The worker also had a history of complaints for rudeness and unprofessional conduct from supervisors, a psychologist, and family members involved with children on his caseload. The board upheld his dismissal on the grounds of inefficiency, neglect of duty, insubordination, discourteous treatment of the public, and willful disobedience.

One CPS case that demonstrates the failings of the agency as much as of the worker involves a supervisor in the Douglas office. The agency dismissed her over allegations she failed to investigate abuse reports or meet with clients, and had been closing her own cases in violation of agency policy. The notice of charges issued by the agency cited 20 separate cases in which the woman had failed to investigate or properly document information. In closing arguments to the personnel board's hearing officer, agency officials claimed that as a result of the worker's failure to perform her duties, "at least seven children are possibly still facing frightening and dangerous abusive or neglectful situations."

But the hearing officer, Steven Guttell, shot several holes in the agency's case, noting at one point the more problems DES officials cited with the worker's conduct, "the more unbelievable the justification for termination becomes."

*One CPS worker was fired when he refused to handle the placement of a child on his caseload into a drug treatment facility because his workday was almost over.*



First, the woman's supervisors apparently knew of her deficiencies but failed to correct them.

"Her supervisors did not supervise," Guttell wrote in recommending the woman be reinstated to a non-supervisory position. "They either knew or should have known what was going on in the Douglas office."

Second, the agency was trying to fire the woman for failure to document her cases. But it did not document prior concerns about poor performance in her annual reviews.

As to the contention that "at least seven children" remained at risk, Guttell said there was no evidence the agency had done anything in the meantime to ensure the children were safe. Guttell concluded he "cannot fathom" how the woman's supervisors could have failed to deal with the allegations that resulted in her termination "and not themselves been disciplined in any manner."

The personnel board rejected Guttell's recommendations and upheld the woman's firing on a 3-2 vote. She appealed in superior court. That case remains open.

Meissner, the agency's spokesman, said he could not comment on that case specifically. But he did say supervisors are held accountable for correcting substandard performance of their subordinates.

"You are seeing the failures," he said. "You are not seeing the ones that we were successful in changing behavior."

## **Children At Risk**

CPS workers are not the only government employees whose job performance affects children on a daily basis. School teachers spend more time with children than any other public employee. To assess how teachers with disciplinary problems are dealt with, the Goldwater Institute reviewed about 15 months' worth of cases from the Tucson Unified School District, the state's second largest in terms of student population.

No teachers were terminated during the period reviewed, according to documentation supplied by the district. Discipline tends to stop at written reprimands, even for teachers with a history of problems. Of the 84 cases the Goldwater Institute reviewed, 49 resulted in written reprimands, the lowest form of discipline. Twelve workers signed separation agreements which allowed them to resign or retire rather than face discipline. Another teacher quit after being put on administrative leave. There were only eight suspensions ranging from two days to 15 days. The rest of the cases involved letters of direction, which technically are not considered discipline under the district's agreement with the teacher's union.

*For teachers, discipline tends to stop at written reprimands, even for teachers with a history of problems.*

Documentation in many of those cases was scant, and numerous follow-up requests for records were required. Even after repeated efforts, some disciplinary actions taken by the district were not fully documented.

Based on the records that were supplied, the most common reason school personnel in Tucson were disciplined is making inappropriate remarks to students. Sometimes that involved the use of profanity or insensitive racial comments in the classroom. Other times teachers got into trouble for bickering with parents or administrators.

Three teachers were disciplined for telling their students personal stories about their sex lives or drug and alcohol use. Two received written reprimands. The third, who was suspended for five days, often used profanity in his math class, and talked about how much marijuana he had smoked in college and the amount of alcohol he could drink, according to students. The teacher “told them it was OK to do cigarettes and weed, but not meth or cocaine,” one student reported.

## **Ridiculing The Class**

In a few instances, teachers were disciplined for harassing or threatening students.

One teacher had a history of ridiculing children in his class, both verbally and physically. The middle school teacher received a written reprimand in October 2009 for inappropriate racial comments to black and Hispanic students, according to district records. He denied making some of the statements and said the others were taken out of context.

*One teacher had a history of ridiculing children in his class, both verbally and physically.*

“My teaching methods can be misunderstood and misinterpreted,” he wrote, adding he tried to bond with students to “make them feel welcome in my class.” A month after receiving the written reprimand, the teacher received a two-day suspension for repeatedly teasing a girl in his class about her petite size, which is the result of a medical condition, according to the suspension letter.

The school principal called his behavior toward students “unprofessional, hurtful and/or inappropriate.”

In March 2010, the same teacher was drawing new complaints that he ridiculed and embarrassed students in his class, and threatened them with a bad grade unless they allowed him to take their photographs, according to a notice of inquiry from the principal. He projected the photos in front of the class and zoomed in on imperfections, such as scars, birthmarks, and acne. The teacher told one student she had cancer because she has freckles. A handwritten note from the girl said she was particularly frightened by the remark because her mother has cancer, and she fears it is hereditary.

“The complaint also alleges that you took videos of ‘private parts’ of the students because ‘you could,’” the school principal wrote in the letter to the teacher. “The allegations include that you shared with the class that you can’t joke around with the students any longer because they got you in ‘bad trouble.’”

The teacher resigned in a separation agreement in April 2010.

Several teachers received written reprimands after complaints they allowed their classrooms to run wild. One of them, a middle school teacher, was disciplined after a student showed the principal a cell phone video which “revealed a classroom that was chaotic, disorganized and unsafe.” One student was openly vandalizing equipment. Another was hopping from table to table as other students were laughing, yelling, and roaming around the classroom. The teacher signed a separation agreement a month later.

Of the eight suspensions, two teachers were sent home without pay for more than two weeks. One was suspended for 15 days because he showed up at a football game after spending the afternoon drinking beer. The other was suspended for almost three weeks for repeated instances of putting children in his elementary class on his lap, despite having been warned and reprimanded in the past for the same behavior.

Dr. Matthew Ladner, vice president of research at the Goldwater Institute, called the bad behaviors described in district disciplinary files “poison” to a strong learning environment. Research shows that students with high-performing teachers three years in a row will learn about 50 percent more in that time than those with low-performing teachers, Ladner said. If procedural hurdles make it too difficult and time consuming to discipline a bad teacher, it is the kids stuck in their classrooms who end up suffering, he said.

“If you can’t let your bad teachers go, you are really damaging the long-term prospects for the children,” Ladner said. “A human resource management system that won’t allow principals to make the most basic decisions about who they want on their team, to reward success and to remove people from classrooms when they are ineffective or behave inappropriately, is crippling to the ability to produce high-quality schools.”

## Discipline Slow In Coming

Shannon Roberts, director of employee relations at the Tucson school district, acknowledged discipline is often slow in coming for a teacher who is showing bad behavior, making problems difficult to correct. He puts most of the blame on the contract with the teacher’s union, which spells out the appeals procedure that can drag out a case for months.

*“If you can’t let your bad teachers go, you are really damaging the long-term prospects for the children.”  
– Dr. Matthew Ladner, vice president of research at the Goldwater Institute*

Suspensions do not take effect until 30 days after they are imposed, longer if they are appealed. If complaints arise at the end of the school year, the district is required to wait until classes resume to deal with them. That creates a disconnect between the behavior and the punishment, Roberts said. Any teacher who is disciplined can file a grievance, which must then be reviewed by the superintendent or Roberts, as the superintendent's designee.

The teacher can also request a grievance hearing, a formalized hearing process for bringing out evidence and allowing the employee to present a defense. After the hearing, Roberts or the superintendent will decide if the punishment was warranted. If the allegation is proven and the district followed all the procedures laid out in the union contract, the discipline will be upheld, Robert said. If the employee is still not satisfied, the case can be appealed to arbitration through the union. Only the union may request arbitration, under the contract. The individual employee cannot. An arbitrator will hear the case again and make recommendations to the superintendent, who will render the final verdict.

The school board has final say on teachers who are fired or suspended, but Roberts said the board has largely deferred to the personnel department. Employees who are still dissatisfied can appeal to superior court.

"There are so many moving pieces that potentially you could be dealing with an employee issue for months at a time," Roberts said. "It's a lot of steps. I'm really comfortable that we have a lot of due process, probably more than we really need."

Roberts came from the private sector, the health care industry where failing to deal with misconduct or poor performance can jeopardize patient health, he said. The stakes are also high in dealing with bad teachers because kids who are stuck in their classrooms can quickly fall behind their peers, he said.

Because Roberts took over at the end of the period studied by the Goldwater Institute, he said he could not comment on why individual cases were handled the way they were. But, he said, district administrators are trying to create a greater sense of responsibility and accountability. Lean budget times and declining enrollment in the district make it vital that the best teachers are protected and ineffective teachers are forced to improve or leave. The union has fought efforts to streamline the disciplinary process, Roberts said.

"I can tell you one of the directions of our department at this point is – I don't want to say be more aggressive in our approach – but to really make the right decisions at the right time," Roberts said.

"We are not afraid at all to terminate an employee. I think that it can be difficult with the language that is written into our agreement. But I am much more comfortable supporting a termination without hesitation when it rises to that

*"I'm really comfortable that we have a lot of due process, probably more than we really need."*

*– Shannon Roberts, director of employee relations at the Tucson school district*

level of separation because I know that when we look at our collective bargaining agreement, to me there is an abundance of due process.”

Although Roberts said he believes a teacher or administrator may have been dismissed in the last two years, he was unable to provide specifics. The records the district provided in response to the Goldwater Institute’s public records request did not include any terminations.

## Challenging The Discipline

Tucson teachers filed 20 grievances challenging punishment from the school district during the period reviewed, including one from three different teachers who alleged the principal at their middle school was retaliating against them. One of those teachers received a written reprimand in February 2010 for losing volleyball team uniforms and failing to supervise students. A month later, she received a written reprimand for showing up late for class and failing to turn in a pipe full of marijuana she confiscated from a student, which was later stolen.

Records provided by the district did not say how many of the grievances resulted in discipline being overturned, and district officials were unable to provide that information.

Another teacher with a history of insubordination, inappropriate remarks, and “extreme unprofessional conduct” filed separate grievances over two written reprimands she received. In the first action, the elementary school teacher was found to have botched a grading matrix, was unable to explain her teaching methods, drew numerous complaints from parents for rudeness and got into an aggressive argument with her supervisor, according to district records. The reprimand also indicates most of the kids in her class were failing to meet standards in math.

“When over three-quarters of the class is receiving below ‘meeting the standard’ then it is a teacher problem, and not a student problem,” the disciplinary letter states.

A second written reprimand was issued two months later because the teacher ridiculed a student and disclosed confidential information, according to district records. The teacher again filed a grievance. District records did not say how either grievance was resolved.

Luci Messing, president of the Tucson Education Association, said the union is not in business to protect bad teachers, but to ensure the due process rights of teachers are protected. Teachers can be forced out if district administrators do their jobs, Messing said. Problems arise when management brings flimsy cases, does not document misconduct, or does not follow the disciplinary steps laid out in the union contract, she said.

*One teacher with a history of insubordination, inappropriate remarks, and “extreme unprofessional conduct” filed separate grievances over two written reprimands she received.*



“As long as the process is being followed and the information is accurate, we are going to help facilitate a reasonable solution,” Messing said. “We have worked with the district to guide teachers into either resigning or finding alternative employment. What we do is protect the process. If that is followed, we simply ensure that every step is monitored appropriately to ensure that it really will be the best solution for both the district and the teacher.”

Administrators in the Tucson district do not use progressive discipline effectively, Messing said. Written reprimands are used to cover minor infractions that warrant a non-disciplinary letter of direction, she said. They also are used when a suspension is appropriate. The result is the discipline imposed in Tucson tends to be either a written reprimand or a forced resignation.

Another problem in Tucson is that administrators often create a no-win situation for the teachers by refusing to maintain disciplinary standards for the kids, then punishing the teacher for failing to maintain order, Messing said. She cited the case of one middle school teacher who sent a disruptive child to the office only to have administrators immediately send him back to the classroom. The teacher received a letter of direction for that.

In another case, a teacher received a written reprimand after she refused to allow a child to make up a test she had missed, and then made no effort to take it until her mother complained. The teacher refused to back down when the assistant principal told her “is this really the hill you want to die on? Was this one test and one grade for one student so important to you that there is no flexibility?”

The extensive use of settlement agreements is largely because district administrators either have not documented their cases properly, or fear bad publicity over firing a teacher, Messing said. In those instances it is easier to allow teachers with behavioral problems to resign.

“Sometimes, to be quite honest, they may have sufficient evidence to remove (a teacher) from the classroom,” Messing said. “But if there’s even a hint that something could come out that would appear not in total alignment with what should happen, the district is just hesitant to take that chance.”

*The extensive use of settlement agreements is largely because district administrators either have not documented their cases properly, or fear bad publicity over firing a teacher*

### **“At-Will” And Other Reforms**

Arizona is not the only state with a regimented appeals process for government workers. In fact, the civil service protections afforded to state and local workers here are pretty standard. Periodically, one state or another looks at changing the process for getting rid of a bad government employee. Only three states have passed significant reforms – Texas, Georgia, and Florida.

States have great leeway in structuring or even eliminating their appeals processes for government workers. The U.S. Supreme Court has repeatedly ruled that government employees do not have an inherent right to civil service protection in disciplinary actions. However, once a government creates civil service protections, it must abide by the procedures that are outlined in laws and policies, the court has ruled.

There are limits to taking action against employees that state and local governments don't control. All workers, including those in the private sector, are protected from discrimination based on factors such as race, gender, and religion. The Supreme Court also ruled in 1976 that most government workers cannot be fired based on their political registrations, even if they are not covered by civil service laws. Some leeway is given for replacing top administrators responsible for implementing policies of newly elected leaders.

Texas was the first state to do away with the traditional protections for state workers by switching to an "at-will" system akin to that found in the private sector. In 1985, Texas eliminated its merit council and gave control of personnel decisions to state agency directors. When an employee is disciplined, the agency director's decision is final, leaving the worker no recourse but to appeal in court.

*Texas was the first state to do away with the traditional protections for state workers by switching to an "at-will" system akin to that found in the private sector.*

Georgia implemented a two-tiered system in 1996 at the urging of then-Governor Zell Miller, a Democrat. Georgia state employees hired or promoted after July 1, 1996, when the law took effect, became at-will employees. Those hired before that date remained covered by civil service protections until they were promoted or moved to a new position, at which time they went into the at-will system. As with Texas, agency directors and not independent personnel boards have the final say.

When the Georgia reforms were passed, about 82 percent of state workers had civil service protection in disciplinary actions. Today, it's about 21 percent, according to state officials.

Florida's reforms, passed in 2001, were embroiled in partisan politics far more than those in Texas or Georgia, in part because the state has stronger labor unions. Then-Governor Jeb Bush initially wanted to strip all state workers of civil service protection. When the state Senate balked, a compromise was reached that greatly expanded the number of uncovered positions but maintained some civil service protections for most workers. Those workers still in the system can appeal discipline to the Florida Public Employee Relations Commission. But the appeals board can only uphold or reject the discipline. It cannot substitute its view of the proper punishment for the agency director's.

## Patronage Fears

Researchers who have studied the reforms in the three states say there have been few dramatic changes since they were passed. None of the states went through wholesale firings when new governors took over. Turnover and retention rates did not change dramatically. There is little or no indication that politics dictated personnel decisions any more than it did before the changes were implemented.

On the other hand, there is little evidence that the ratio of good workers to bad in those states has changed much either.

“I don’t think it’s moved the world one way or the other,” said Edward Kellough, professor and department head at the School of Public and International Affairs at the University of Georgia. “The upside is if there is an employee that needs to be fired, it’s easy to do. The downside is that additional authority that’s given to management can always be abused.”

Jerrell Coggburn, chair of the Department of Public Administration at North Carolina State University, said studies he did of the Texas reforms did not show significant evidence that patronage had crept into the system after the changes were passed. Other researchers have found state termination rates are about the same regardless of civil service protection, he said. However, the time it takes to dismiss an employee is significantly shorter in states without traditional protections, he said.

“One can safely say you can get rid of folks with behavioral or performance problems significantly more quickly, but the level of precision is probably questionable,” Coggburn said. “I’m not a proponent of employment at will, but I do have to say that I’ve been positively surprised that there hasn’t been the kind of widespread abuse that we feared there would be.”

Personnel officials also say removing merit protections has not led to dramatic changes in the workforce.

In Georgia, the changes did not spur widespread firings, said Frank Heiny, who until recently was the assistant commissioner of the state’s personnel administration.

In addition to making the disciplinary system more efficient, the reforms in Georgia made it easier to hire new employees in good times and lay off workers based on performance rather than seniority in bad, Heiny said. In day-to-day operations, covered and uncovered employees are treated equally, he said. Even uncovered employees can only be dismissed for cause in Georgia, he said, adding there has not been any noticeable rise in the number of terminated employees who have appealed in the courts.

*The reforms in Georgia made it easier to hire new employees in good times and lay off workers based on performance rather than seniority in bad.*

“It was seamless,” Heiny said. “Quite honestly, it wasn’t even a blip on the radar screen for most employees.”

Phil Spooner, workforce design and compensation manager in Florida, said agency directors do not make disciplinary decisions lightly. It costs a lot of money to hire and train a government worker, he said. Agency directors also recognize they are dealing with people’s livelihoods and “err on the side of caution” in disciplinary matters.

“It’s just made it easier for them to deal with what they perceive to be problem employees,” Spooner said. “If you are a good employee doing your job, you’re going to stay around.”

## Incremental Reforms

Some parts of state government in Arizona do not have civil service protections for their employees. Workers at the legislature are at-will employees who can be dismissed without cause. They all serve at the pleasure of the House speaker or Senate president, though both give deference to the minority party when it comes to managing their political staffs, said Victor Riches, chief of staff for the House of Representatives.

Beyond the political staff, the House also has clerks, secretaries, security workers, and custodians, all of whom can be disciplined without civil service protections. Riches said it is rare that a non-political worker gets dismissed. When it does happen, it is for cause, he said. The last non-political worker Riches recalls being dismissed was a member of the security staff who was not showing up for work. That was a year ago, he said.

The other benefit of at-will employment in the legislature is that people can be paid based on their expertise, rather than be locked into a formula based on their civil service pay grade, Riches said.

“From my perspective it’s a much better process,” Riches said. “We can hire the best people. We get to compensate them accordingly. And frankly, if something doesn’t work out, you can terminate the people that are discipline issues without having to jump through a bunch of hoops.”

Some agencies have also moved incrementally toward at-will employment for a greater share of supervisory and upper-level workers. At the Department of Environmental Quality, an effort was launched several years ago to move almost all of the management and supervisory positions to at-will employment, said Henry Darwin, the deputy director.

*Some agencies have also moved incrementally toward at-will employment for a greater share of supervisory and upper-level workers.*

Of the 532 people working at DEQ, about 63 percent are in covered positions and receive civil service protection. Among all agencies under the executive branch, about 81 percent are covered.

Darwin said an “at-will” system gives agencies more flexibility in hiring, firing, and layoffs. It also aids in recruiting workers for the agency that relies on technical expertise because it has more flexibility in offering pay that is competitive with the private sector, Darwin said.

Everyone at DEQ who has moved from a covered to uncovered position has done so voluntarily when they are hired or promoted, he said.

“We are allowed to run our agency more like a private company,” Darwin said. “If you’ve got employees that are doing their job and they are performing, then you keep them. If they are not doing their job, they’re not performing, you don’t keep them.”

## **Problems And Political Pitfalls**

There hasn’t been much interest among elected leaders in changing the civil service protections in Arizona, either at the state or local levels, according to critics of the current system. Holding government workers accountable for their behavior and performance may play well with the public at large, they say, but reform talk also stirs up powerful special interests that will quickly turn on any politician looking to make it easier to get rid of a bad worker.

Governor Jan Brewer’s staff has been gathering information about the reforms passed in Georgia, Florida, and Texas to study whether some of those changes might be appropriate here, said Brian McNeil, the governor’s deputy chief of staff for operations.

Brewer spokesman Paul Senseman said the governor plans to push for changes in state personnel rules in January, when the new legislative session begins.

“We are looking very closely at the Georgia and Florida models, and Governor Brewer expects to formally announce a significant and substantive proposal for personnel reform in January,” Senseman said in a recent interview. “We are in the midst of finalizing the details of the proposal.”

At the local level, there is little interest among politicians in reforming the system, said DiCiccio, the Phoenix councilman.

City elections are held in odd years, when turnout is relatively low compared to statewide general elections. The nearly 14,000 Phoenix workers, most of whom live in the city, represent a powerful voting block. So do the labor unions that



*Arizona Governor  
Jan Brewer*



represent government workers, which can pump money and manpower into defeating reformers.

Politicians who promise to maintain the status quo can count on backing from government workers and public employee unions, DiCiccio said. Those who do not are targeted for defeat. The end result is that “the elected officials protect the employees and the employees protect the elected officials,” he said, adding the same dynamic plays out in local elections across the state.

“Everything at the City of Phoenix is geared toward the employees,” DiCiccio said. “The taxpayers come last, always.”

## **The Goldwater Institute**

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